S.B.Civil Second Appeal No. 199/2004.
(Brijlal Dattak Vs. Likmichand and anr.)

Date of order : 29-01-2005

HON'BLE MR.JUSTICE N.P.GUPTA.

Mr.R.R.Nagori, for the appellant.
Mr.S.G.Ojha & Mr.K.L.Bansal, for the respondents.

Heard learned counsel for the parties, and perused the impugned Judgments & decrees. In my view, the appeal involves the substantial question of law, as to whether the learned courts below were right in dismissing the plaintiff's suit under O.7 R.11 CPC merely on the basis of decision of previous suit between Shanti Devi and Likmichand?

All the learned counsel for the parties agree that even on the face of averments made in the earlier suit filed by Shanti Devi against Likhmichand, the case of Shanti Devi was that, out of 57 bighas of land, she has title on 32 bighas of land only. Rest 25 bighas of land have been given over to Rami Devi in two piece-meal i.e. 20 bighas at one instance, and 5 bighas second time. It is, in this back-ground that, Likmichand had sold 47 bighas of land in the capacity as adopted son, which was subject matter of dispute in previous suit, and which was compromised between Shanti Devi and Likmichand, in which Brijlal was not party, and therefore, that litigation or compromise decree, can possibly not effect the right, title and interest of Brijlal, if he has any.

In that view of the matter, suit could not be dismissed under O.7 R.11 CPC.

Accordingly, the appeal is allowed, and with the consent of the parties, impugned orders are set aside, and the matter is sent back to the trial court with the direction to decide the suit on merits in accordance with law.

(N.P.GUPTA),J.

Srawat/-